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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,782	11/24/2003	Mahmoud Assaf	P1454US01	4948
32709	7590	05/17/2007	EXAMINER	
Gateway Inc			WEI, ZHENG	
Patent Attorney			ART UNIT	PAPER NUMBER
PO Box 2000			2192	
N. Sioux City, SD 57049				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/720,782	ASSAF, MAHMOUD	
Examiner	Art Unit		
Zheng Wei	2192		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 May 2007.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-18 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 24 November 2003 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application
6) Other: _____

DETAILED ACTION

1. This office action is in response to the applicant's election filed on 05/02/2007
2. Claims 1-18 are elected for examining without traverse
3. Claims 1-18 are pending and have been examined.

Oath/Declaration

4. The Office acknowledges receipt of a properly signed oath/declaration filed on November 24, 2003.

Priority

5. This application is a division of Serial No. 09/404,423 filed on 09/23/1999, now Pat No. 6,665,778. Therefore the priority date considered for this application is September 23, 1999.

Information Disclosure Statement

6. There is no Information Disclosure Statement filed for this application.

Drawings

7. The drawings filed on November 24, 2003 and March 25, 2004 are accepted by the Examiner.

Claim Objections

8. Claims 4-6, 10-12 and 16-18 are objected to because of the following informalities:

Claims 4-6, 10-12 and 16-18: In claim 4, line 17, claim 10, line 12 and claim 16, line 11, "address one specific operating system", the words "one" are typo and should be changed to --of--. Same correction should be made for dependent claims 5, 6, 11, 12, 17 and 18.

Claims 11 and 12: These claims should depend on claim 10 instead of claim 7. Because claims 10 defines "a current pointer" and claim 11 further defines "the current pointer"

Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 2, 4-6, 8, 10-12, 14 and 16-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 2, 8 and 14: The claims define the determining step comprising comparing at least one of the dates, time and number of bytes of the operating system which was not disclosed in the specification. Rather, the specification discloses a different way to determine the operating system type by comparing common files. (see for example, p.16, lines 1-9, "OSTrack could distinguish and verify which OS is loaded 706 by reading and comparing the date time and number of bytes of the common files that Microsoft operating system is loaded..."). For the purpose of compact prosecution, the Examiner treats the step to determining operating system as comparing at least one of the dates, time and number of bytes of common files used by operating system.

Claims 4-6, 10-12 and 16-18: The claims define virtual-register-like pointer including a current pointer and a second pointer which was not described by specification. Because, according to the specification (see for example, p.16, lines 16-18, "a virtual-register-like pointer that refers to a byte position relative to a particular phase"; "Two pointers or virtual register may be defined within the

data recorder to assist the drive to load the right module"), the virtual-register-like pointer is only the pointer points to a location of particular phase (data recorder). Thus, it is the address of particular phase (data recorder) includes two pointers and not the virtual-register-like pointer itself. For the purpose of compact prosecution, the Examiner treats the virtual-register-like pointer as a general pointer pointing to a memory/data block and the memory/data block further includes pointers to point to the operating system information.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1 and 3-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang (Wang et al., US 6,199,194)

Claim 1:

Wang discloses a method for optimizing device performance, comprising:

- determining an operating system type (see for example, Fig.4B, step 412, "Java Program Detects Type of OD of Local Computer System" and related text; also see step 418 and related text);
- saving the operating system type in a data recorder (see for example, col.5, lines 51-54, "At this point, the JNI implementation can display to the user the detected local system characteristics..."); and
- loading a firmware module based on the saved type (see for example, col.6, lines 48-51, "JNI implementation is provided for a specific OS type and is operative to use the firmware update file for programming local hardware device firmware").

Claim 3:

Wang also discloses the method as described in claim 1, further comprising saving the operating system type in a specific address as set by a virtual-register-like pointer (see for example, col.5, lines 51-54, "At this point, the JNI implementation can display to the user the detected local system characteristics...").

Claim 4:

Wang further discloses the method as described in claim 3, wherein the virtual-register-like pointer includes a current pointer to state and address one specific operating system (see for example, col.5, lines 54-56, "After these local system

characteristics have been detected, the Java program fetches the appropriate firmware ...". To detect the local system characteristics (state and address), the pointer has to be known to locate the local system).

Claim 5:

Wang also discloses the method as described in claim 4, further comprising incrementing the current pointer to describe changes in the operating system (see for example, col.5, lines 9-11, "a local computer system having a particular OS" and "to computer systems having different operating systems"; also see col.5, lines 54-56, "After these local system characteristics have been detected, the Java program fetches the appropriate firmware ...").

Claim 6:

Wang further discloses the method as described in claim 4, wherein the virtual-register-like pointer includes a second pointer to state which module to load for a specific operating system (see for example, col.6, lines 22-24, "the JNI implementation places the firmware update data into the memory that has been allocated and initialized in operations 436 and 438").

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 7, 9-12, 13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang (Wang et al., US 6,199,194)

Claims 7 and 9-12:

Claims 7-12 are a program product version of claimed method, wherein all claimed limitations have been address and/or set forth above in claims 1 and 3-6. Therefore, as the references teach all the limitation of claims 1 and 3-6, they also teach the limitations of claims 7 and 9-12 respectively. Thus, they also would have been obvious.

Claims 13 and 15-18:

Claims 13-18 are information handling system version of claimed method, wherein all claimed limitations have been address and/or set forth above in claims 1 and 3-6. Therefore, as the references teach all the limitation of claims 1 and 3-6, they also teach the limitations of claims 13 and 15-18 respectively. Thus, they also would have been obvious.

15. Claims 2, 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang (Wang et al., US 6,199,194) in view of Stevens (Curtis E. Stevens, US 6,519,659)

Claim 2:

Wang discloses the method as described in claim 1 about detect local OS type, but does not explicitly disclose how wherein the determining step comprises comparing at least one of the dates, time and number of bytes of the operating system. However, Stevens in the same analogous art of determining type of operating system, discloses the step of how to determine type of operating system (see for example, Fig.6B, step 345-350 and related text; also see col.14, lines15-20, "The process 220 then determines the operating system by reading a set of specific files and parses the content of the files"). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to detect the type of OS in order to further load the firmware driver type (see for example, col.6, lines 48-51).

Claim 8:

Claim 7 is a program product version of claimed method, wherein all claimed limitations have been address and/or set forth above in claim 2. Therefore, as the references teach all the limitation of claims 2, they also teach the limitations of claim 7. Thus, it also would have been obvious.

Claim 14:

Claim 14 is information handling system version of claimed method, wherein all claimed limitations have been address and/or set forth above in claim 2.

Therefore, as the references teach all the limitation of claim 2, they also teach the limitations of claim. Thus, it also would have been obvious.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zheng Wei whose telephone number is (571) 270-1059 and Fax number is (571) 270-2059. The examiner can normally be reached on Monday-Thursday 8:00-15:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the TC 2100 Group receptionist whose telephone number is 571- 272-1000.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ZW



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SUPERVISORY PATENT EXAMINER